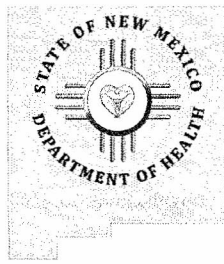


SUSANA MARTINEZ, GOVERNOR



CATHERINE D. TORRES, M.D., CABINET SECRETARY

June 1, 2012

SENT VIA FIRST CLASS CERTIFIED, AND REGULAR U.S. MAIL

Robert Ortiz
4 Enebro Court
Santa Fe, NM 87508

Re: Notice of Final Action-Dismissal

Mr. Ortiz:

Pursuant to State Personnel Board (SPB) Rule 1.7.11 NMAC, you are hereby dismissed from your position as a General-II Manager with the Administrative Services Division (ASD), for just cause, effective June 6, 2012. The reasons for this action are inappropriate and unprofessional conduct, disingenuous or irresponsible communication with the media, and for creating a hostile work environment, violations of the DOH's Code of Conduct (HR 015), Discipline Policy (HR 08:105, formerly, HR 030 Discipline) and Communication with News Media (HR 08:103, formerly HR 020). You signed for the DOH policies and procedures on April 7, 2008, April 8, 2008, May 2, 2010 and January 6, 2011.

On December 4, 2009, "Feet to the Fire" (the "December 2009 Article") was published in the Santa Fe Reporter (the 'Reporter'), which also included a blog on the Reporter's website. The blog contained numerous personal attacks on individual DOH employees, which were hurtful, disingenuous, unfair, and offensive. Through 2011, Reporter articles and related blogs continued to focus on the Department and its employees through repeated allegations and personal attacks.

Another article the Reporter published on January 13, 2010, "DOH!" (the "January Article") recycled allegations from the December 4 Article and also included comments generated from the Reporter's blog. The January 13 Article also contains multiple references to your apparent collaboration with the Reporter for that particular article.

According to the January 2010 Article—which you never refuted or corrected—you claimed your supervisor ordered you to perform a "fraudulent transaction" to cover up a purported accounting error. You failed to disclose or clarify that actually management directed you to remove an erroneous journal entry that earlier you had directed to be entered into the SHARE program. You failed to disclose to the Reporter that the entry you had dictated added almost \$1.7 million to the principal amount of a federal grant;



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and, unless corrected, it would have resulted in the appearance that the Department had exceeded allowable spending from that grant in the amount of \$1.4 million dollars. Without ever clarifying your statements, you essentially accused Mr. Mulligan of ordering you to conceal 'fraud', when actually your allegations of fraud were unsubstantiated and eventually found to be erroneous in light of other, more persuasive evidence.

In fact, you alleged 'fraud' when evidence before and after the fact pointed more correctly to an incidence of accounting errors and systemic issues that arose from a confluence of differing federal and state fiscal years, and shift of budget and accounting operations into the statewide SHARE system. You knew or should have known that 'fraud' was a politically and socially charged word, particularly in terms of public accounting and finance and the people who are held accountable in such situations. You knew or should have known also that 'fraud' was inappropriate and also inaccurate in terms of identifying the issues that actually formed the foundation of financial and accounting discrepancies relating to the Department's operations and use of federal funding in the Women Infants and Children program (WIC). You misused your position and information you obtained through your position to publicize your message which was inappropriate, unfairly disparaging of coworkers, self-serving, and harmful to the Department, its employees, and its reputation.

On February 16, 2011, the Reporter produced and distributed "DOH Ask, DOH Tell" (the "February 2011 Article"), which centered on your allegations that the Department had engaged in fraud in regard to funding relating to WIC operations and your request for information from the Department. You also alleged that you directed "meeting minutes" to be drafted and distributed after each WIC team meeting but they were really emails from a Ms. E.J. Nelson who drafted and sent meeting summaries at the behest of then Deputy Secretary, Duffy Rodriguez. You provided documents—which belonged to the Department, not you—to the Reporter claiming they supported your allegations. However, you knew or should have known that multiple inquiries and audits by WIC, the Department, and outside agents all disproved your claims the Department defrauded or attempted to defraud WIC. You willingly continued to provide disingenuous or self-serving statements while also failing to correct or retract the growing mass of your well publicized accusations.

On September 21, 2011, the Reporter produced and distributed "Cashed" (the September 2011 Article). Once more you and the Reporter restated your allegations and, in a quote that accompanied the photograph you apparently posed for, you claimed "I am being paid \$96,400 a year to be in 'time out' because I reported fraud." As a General 1 Manager purportedly experienced and knowledgeable as a budget and accounting specialist, you knew or should have known that your repeated allegations of fraud were inappropriate, contradicted by substantial evidence, and harmful in their individual and cumulative effect on persons you accused, as well as on the Department and its other employees.

Your failure to refer media inquiries about the internal fraud allegations to the Public Information Officer and, concurrently, your failure to obtain permission to speak as a DOH employee with the media violated DOH HR Policy 08:103 and constituted insubordination. Under HR 08:105, insubordination is a Group 3 offense. Offenses in this group are sufficiently serious that even a single occurrence may result in dismissal.

Your inability or unwillingness to competently assess and resolve the WIC accounting and budgetary discrepancies constituted negligence in regard to your duties and obligations as a General 1 Manager in charge of the Grant Administration Bureau. Providing statements and documents in support of your self-serving allegations, without disclosing relevant and material contradictions to your claims, constituted unauthorized disclosure or misuse of official information, a Group 3 offense in violation of ADM 08:105 (formerly, HR 030 Discipline). Under ADM 08:105, a Group 3 offense is sufficiently serious that each single occurrence may warrant dismissal without prior or lesser disciplinary action.

You never refuted or clarified your erroneous or disingenuous statements to the Reporter, which subsequently published your misinformation in multiple articles, each time quoting you directly. However, in subsequent circumstances, you admitted that you knew the term 'fraud' did not apply to the people or circumstances as you had formerly described to the Reporter. You even claimed at least one subsequent occasion to be unaware of any issue about fraud. On the whole, the self-serving allegations and misinformation you provided to the Reporter were evidence of either your lack of candor; or, otherwise, your inability or unwillingness to provide correct or competent clarification of the relevant facts and circumstances regarding the Department's finances. Your statements to the Reporter also evidenced your willingness to attack or sabotage the individual and collective reputations of your coworkers with what you knew or should have known was erroneous or misleading information.

Consequently, your statements to the Reporter created a hostile environment for your colleagues. Your statements to the Reporter—whether erroneous or disingenuous—unnecessarily made your colleagues feel mental anguish, humiliation, and outrage each time the Reporter recycled your unfounded allegations. Providing false, misleading, disingenuous, or erroneous statements to a media publication alleging that your coworkers engaged in fraud and conspiracy unnecessarily created a hostile environment; and it also constituted abuse and mistreatment of DOH employees. Abuse or mistreatment of DOH employees violates ADM 08:105. Under HR 08:105, abuse or mistreatment of another employee constitutes a Group 3 offense and is sufficiently serious that even a single occurrence may result in dismissal.

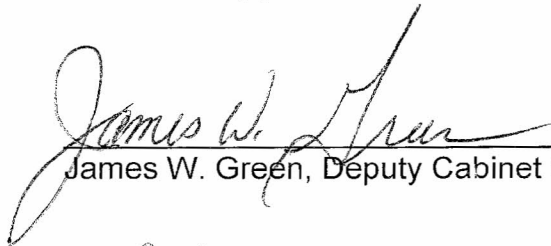
As a General 1 Manager, you were expected to maintain an individual commitment to high standards of conduct and behave in a manner consistent with your role as a public servant and employee of the Department. Your conduct directly and indirectly jeopardized the confidence placed in you and the Department by the citizens and taxpayers of New Mexico. You willfully asserted and reasserted statements to a media

outlet when you knew or should have known such statements to be incomplete, misleading, false, or even pernicious. Your repeated self-serving pattern of unsubstantiated accusations evidenced an unacceptable lack of integrity or responsibility for an employee in such an obvious leadership role within the Department.

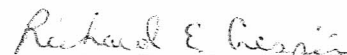
The evidence relied upon for this action consists of written and oral statements; SHARE reports and publications; Investigative Reports, dated October 6, 2011, November 15, 2011; and November 28, 2011, SPB rules and regulations; and policies and procedures.

The Notice of Contemplated Action was mailed, via certified mail and regular mail on May 4, 2012. Your legal counsel, Diane Garrity, requested an oral response on May 16, 2012. Your oral response meeting was held on May 24, 2012. In attendance in addition to you and your legal counsel, Diane Garrity, were Greg Lauer, DOH-Office of General Counsel, and Ty Ryburn, DOH-Human Resources Manager. You did not provide any information requiring a change to the proposed disciplinary action.

You may appeal this action in writing to the State Personnel Board at 2600 Cerrillos Road, P.O. Box 26127, Santa Fe, NM 87505-0127. The appeal must be received by the State Personnel Director within thirty (30) calendar days of the effective date of the action. A copy of the Notice of Final Action must be submitted with the appeal.



James W. Green, Deputy Cabinet Secretary



Richard E. Crespin, ASD Director

Cc: Personnel File